

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
BellSouth Corporation's Petition for	)	WC Docket No. 05-277
Waiver	)	

**COMMENTS OF SBC COMMUNICATIONS Inc.**

On September 19, 2005, BellSouth filed a petition for waiver asking the Commission to waive tariffing, price cap, and accounting requirements applicable to dominant carriers for BellSouth's provision on an integrated basis of interLATA services following the sunset of section 272 requirements for BellSouth on December 19, 2005.<sup>1</sup> On behalf of its affiliates, SBC Communications, Inc. (SBC) urges the Commission, in lieu of granting BellSouth's requested waiver, to complete expeditiously its long-pending rulemaking proceeding and, specifically, to rule in that proceeding that BOCs are nondominant in their provision of interstate, interexchange services.

As BellSouth correctly notes, dominant carrier regulatory requirements were adopted in a different age to govern the conduct of stand alone long distance carriers and to address concerns that are no longer valid. New technologies have advanced at a rapid pace to challenge and displace traditional communications services. Wireline and wireless networks have grown faster

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<sup>1</sup> See *Pleading Cycle Established for BellSouth Corporation Petition for Waiver of Tariffing and Price Cap Rules and of Accounting Requirements*, Public Notice, WC Docket No. 05-277, DA 05-2529 (Rel. Sept. 27, 2005).

and more robust and provide vastly greater bandwidth than was possible just a few years ago. The growth of national wireless networks and the development of new wireless technologies have increasingly provided alternatives for consumers of voice and data services. The shift from dial-up to broadband Internet access has unleashed an expansion of the content and service available to tens of millions of Americans. The widespread adoption of broadband connections to the Internet has led to the next logical and inexorable step – voice over Internet Protocol (VoIP). Cable operators and others are rapidly exploiting this technology to compete more aggressively for voice service, including in packages with video and high-speed Internet access. In short, the telecommunications market is experiencing fundamental and revolutionary change that has rendered old regulatory paradigms obsolete. As BellSouth notes, all of the BOCs' rivals in today's intensely and growingly competitive marketplace are free to choose the corporate structure that enables them to compete most effectively without subjecting themselves to the penalties associated with dominant carrier regulation. There is simply no reason why the BOCs should not be given the same flexibility. To the contrary, singling out one set of providers in this highly and growingly competitive landscape only reduces competition and harms consumers.

While BellSouth recognizes the forces that have rendered dominant carrier regulation of any provider of interstate interexchange services unnecessary and counterproductive, it justifies its waiver request on the ground that its nondominant status should not be delayed by pending mergers involving other companies. But as has been made abundantly clear in those merger proceedings, the mergers will have no material impact on the level of competition for any telecommunications service. For one thing, the mergers will join companies with largely *complementary* strengths and product sets. For example, AT&T is focused primarily on serving national and global enterprise customers with sophisticated needs, while SBC chiefly addresses

the needs of residential customers and smaller and regional businesses whose operations are primarily inside SBC's thirteen state region. The combination of these companies will in no way result in an entity with market power in any segment of the interstate interexchange marketplace.

In the mass market sector, the facts already bear that out. More than a year ago, AT&T decided to exit the mass market entirely and it has since creased virtually all marketing of mass market services while raising its prices. The exit of AT&T from the market, however, has not bestowed market power on SBC. SBC has not been able to raise prices of its long-distance offerings or reduce service quality. On the contrary, SBC – and other BOCs – are struggling to retain access and long-distance lines in the face of growingly intense intermodal competition. According to a Standard & Poor's Equity Research Report in yesterday's *Business Week Online*, from June 2004 (when AT&T decided to exit the mass market) until June 2005, the BOCs lost 4.5% to 5.5% of their access lines to cable, wireless, and, to a lesser extent, wholesale local service providers.<sup>2</sup> That same article notes that the BOCs have attempted to stem these losses through bundled offerings but that the losses continue nonetheless, even as operating margins are squeezed through price reductions. It predicts that these losses will continue in the future and that, "as the local phone biz fizzles ... some carriers will spin off or sell their local phone business."<sup>3</sup> Under these circumstances, it makes no sense to impose dominant carrier regulation

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<sup>2</sup> Todd Rosenbluth, TECH KNOWLEDGE, *Business Week Online*, Oct. 17, 2005.

<sup>3</sup> While this analysis focused on local phones lines, it is equally apt to consumer long-distance services because consumers who substitute VoIP or wireless service for their landline connection will obviously not be obtaining long-distance service from their BOC.

on BOC long distance services. The SBC/AT&T and Verizon/MCI mergers will not halt the changes that have fundamentally transformed the telecommunications industry and rendered dominant carrier regulation harmful and obsolete, and they in no way obviate the need for a prompt ruling that will place the BOCs on an equal footing with their intermodal and intramodal competitors.

Nor will the mergers have any material impact on the vigorous competition that has long existed for enterprise services. It has been almost fifteen years since the Commission streamlined its regulation of AT&T's enterprise services and ten years since the Commission declared AT&T nondominant in the provision of those services. Since then the Commission has repeatedly held that business customers have numerous choices among suppliers of communications services. For example, in approving the merger of MCI and WorldCom, the Commission found that there were numerous competitors,<sup>4</sup> that "barriers" to providing retail long distance services were "low" in light of the glut of long haul capacity;<sup>5</sup> and that anticompetitive conduct against large businesses was particularly unlikely because "business customers generally are sophisticated and knowledgeable consumers of long distance services and often obtain competitive prices through requests for proposals from carriers."<sup>6</sup> Similarly, in reviewing the Bell Atlantic-GTE merger, the Commission recognized that "a large number of firms" with "similar capabilities" serve business customers and emphasized that, in light of the

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<sup>4</sup> *MCI/WORLDCOM MERGER ORDER*, 13 FCC Rcd. At 18045 ¶¶ 34, 40-42, 65.

<sup>5</sup> *Id.* at 18047-48 ¶ 36; *see also id.* at 18064 ¶65.

<sup>6</sup> *Id.* at 18064 ¶65.

“sophisticat[ion]” of business customers, “broad-based name recognition and mass advertising” was not required to compete successfully in the market.”<sup>7</sup>

Since these conclusions, competition has become even more intense as more competitors than ever before provide voice and data communications services to business customers in the United States. These include, not just traditional IXC, LEC, and CLEC, but foreign-based carriers, cable providers, system integrators, equipment vendors and value-added resellers, which collectively serve large businesses on a national and global basis. Thus, regardless of the profile of a business customer – whether it is predominantly regional or national, whether it seeks local voice or long-distance data, or whether it wants simple packages of services or complex arrays of managed services – myriad providers are and will remain prepared to make competitive offers. The merger will in no way change that reality, nor could it, since SBC is currently an insignificant player in the enterprise space. Thus, there is no rational basis upon which the Commission could conclude that the elimination of structural separation warrants dominant carrier regulation of the BOCs’ mass market or enterprise services. .

BellSouth maintains that a prompt decision is critical for business planning purposes. But that is equally, if not more, true of SBC. If and when the SBC/AT&T merger is approved, SBC must immediately begin the process of post-merger integration planning. Uncertainty as to the consequences of various organizational structures will compromise that planning process. Accordingly, SBC urges the Commission to rule at the earliest possible date that BOCs are

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<sup>7</sup> *GTE Corp. and Bell Atlantic Corp.*, 15 FCC Rcd 14032, at 14097 ¶ 121 (2000).

nondominant in their provision of interstate interexchange services irrespective of whether they provide those services outside of a section 272 affiliate.

Respectfully submitted,

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